indicating that the previous Office Action should not have been a final rejection and that the finality had been withdrawn.

The Examiner's willingness to address the matter with the Applicant's is greatly appreciated.

REMARKS

Claims 4-6 and 15-20 are pending in the present application. Claims 15-20 have been allowed. Claims 4-6 have been rejected.

By the amendments above, Applicant has amended Claim 4. The only change has been to add the words "first and second sets of" in the third to last line of the claim when referring to "said microwave sources". The addition of these five words is for clarity only and not believed to be a substantive change to the claims.

In the recent Office Action, Claims 4-6 were rejected under 35 U.S.C. § 103. As explained in greater detail below, and as supported by the Declaration of Jeffrey Mackay submitted herewith, Applicant disagrees that Claims 4-6 are not patentable under 35 U.S.C. § 103.

Reexamination, reconsideration and allowance of the claims is requested.

REJECTION OF CLAIMS 4-6 UNDER 35 U.S.C. §103

Claims 4 and 5 were rejected under 35 U.S.C. §103 over *Akutsu* (U.S. Patent No. 4,809,596) in view of *Lipoma* (U.S. Patent No. 3,718,082) and *Ruozi* (U.S. Patent No. 5,074,200) hereinafter referred to as *"Ruozi '200"*. The remaining Claim 6 was rejected in view of the same references. Further in review of *Ruozi* (U.S. Patent No. 6,039,991) hereinafter referred to as *"Ruozi '991"*.

In rejecting Claims 4 and 5, the Examiner opined that *Akutsu* discloses a product conditioning system capable of sterilizing products including an entrance, an exit with a tunnel subdivided into one or more consecutively aligned stages. The Examiner contends that *Akutsu* discloses a plurality of pressure sealing doors (140) to form a gaseous tight sealed pressurizable stage with a pressurizing means capable of controlling the pressure of a stage capable of increasing the pressure to a sufficient level to prevent sealed passages from bursting upon application of heat.

Strangely, the Examiner states that *Akutsu* discloses that the tunnel has "two pairs of parallel sidewalls (Pg. 2, Para. 4) and that *Akutsu* discloses first and second sets of microwave sources connected to a first side wall and a second opposing side wall (Pg. 3, Lines 1-4). However, the Examiner also explicitly states that *Akutsu* does not appear to disclose the specific cross-sectional configuration of the product conditioning unit. Moreover, Applicant disagrees that there is any description whatsoever within *Akutsu* as to the connection of microwave sources and their relationship to tunnel side walls.

Through admitting that *Akutsu* does not disclose the specific cross-sectional configuration of the product conditioning unit, the Examiner contends that *Lipoma* discloses that the product conditioning unit may be rectangular or circular or elliptical or any other shape as desired[1].

On Page 4 of the Office Action, lines 6-7, the Examiner states that "*Akutsu* does not appear to disclose the connection of the microwave sources with the conditioning tunnel.[2]." However, the Examiner contends that *Ruozi* discloses first and second sets of microwave sources that are connected to opposing sidewalls.

As explained in greater detail below, Applicant respectfully disagrees with the Examiner's analysis.

Applicants Invention

Applicant's invention of Claims 4-6 is a conditioning system for sterilizing products including a tunnel having two pairs of parallel sidewalls to form a tunnel having a substantially quadrilateral cross-section. The conditioning system further includes a plurality of pressure sealing doors to seal at least one stage to form a gaseous tight sealed pressurizable stage, as well as a pressurizing means for controlling the pressure of said pressurizable stage for increasing the pressure to a sufficient level to prevent sealed packages from bursting upon application of heat. The conditioning system is provided with a heating means including first and second sets of microwave sources wherein a first set of microwave sources is directly connected to a first side-wall and a second set of microwave sources is directly connected to a second opposing sidewall so that products traveling upline to downline are positioned between the first and second sets of microwave sources.

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[1] At the bottom of Page 3 of the Office Action, the Examiner states that "*Akutsu* discloses that the product conditioning unit may be rectangular or circular or elliptical or any other shape. However, this is believed to be a typo as the reference language comes from *Lipoma.*

[2] Applicant is unsure as to whether the Examiner meant to refer to Lipoma as neither Akutsu nor Lipoma appear to disclose the connection of microwave sources with a conditioning tunnel.

Respectively, the prior art, either alone or in combination, does not suggest Applicant's product conditioning system wherein a quadrilateral tunnel is provided wherein a first set of microwave sources is directly connected to a first side wall and a second set of microwave sources is directly connected to a second opposing side wall so as to place products there between.

Akustu discloses a product conditioning system including a pressurized chamber employing infra red heaters and a non-pressurized chamber employing microwave sources or other heat sources. In response to Applicant's contention that the microwave sources are in the non-pressurized section too, the Examiner states that the pressure sealing door (140) between stages 2 and 4 can be opened to create one large stage which is fully capable of creating an increased pressure. In response, Applicant would like to point out that the remaining door of stage 2 is not described as being a pressure sealing door. Since there is no suggestion that chamber 2 of *Akutsu* be pressurizable, there is no explicit or implicit suggestion that the remaining unidentified door be pressure sealable. Furthermore, there is certainly no suggestion that the negative pressure system of *Akutsu* would be capable of providing pressure to "a sufficient level to prevent sealed packages from bursting upon application of heat" for both chambers, a limitation of Applicant's Claim 4.

Perhaps more relevant to the following analysis, Applicant agrees with the Examiner that "*Akutsu* does not appear to disclose the specific cross-sectional configuration of the product conditioning unit." (Pg. 3, lns. 10-11). Moreover, Applicant agrees that "*Akutsu* does not appear to disclose the connection of the microwave sources with the conditioning tunnel." (Pg. 4, lns. 7-8).

Lipoma

Lipoma describes a product conditioning system including a pressurizable tunnel which "may be rectangular or circular or elliptical or any other desired shape". (Col. 5, lns. 10-15). *Lipoma* does not state which of these configurations would be preferable or present any reasons supporting the selection of any particular tunnel configuration.

With reference to the figures of *Lipoma*, the references seem to suggest a tunnel having only a single microwave source which passes through one sidewall of the conditioning tunnel. Thus, *Lipoma* does not suggest directly connecting first and second sets of microwave sources to opposing sidewalls for causing products to pass between the first and second sets of microwave sources as claimed by Applicant.

Ruozi '200

Ruozi '200 discloses a product conditioning system having a tunnel with a circular cross-section. (See Fig. 4 inserted below). The tunnel includes "microwave generators (24) ordered in longitudinal rows along its top and sides" (Abstract).

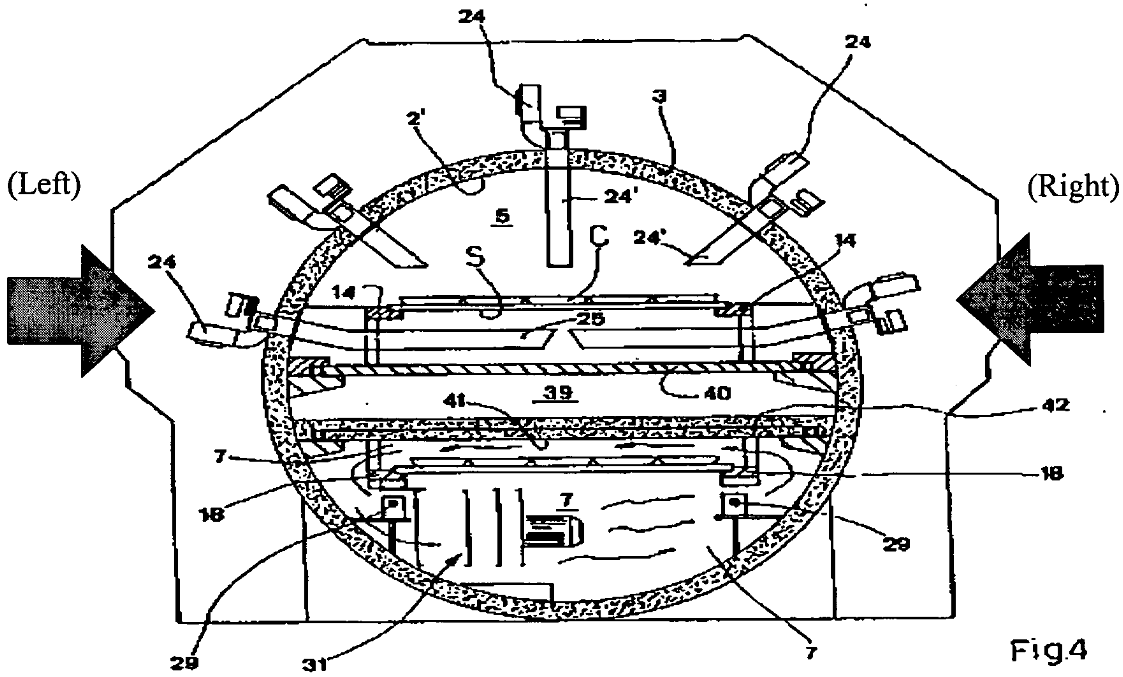

Fig.4

Though *Ruozi '200* does illustrate microwave sources directly connected to the single circular sidewall of the circular tunnel, *Ruozi '200* does not suggest a tunnel wherein a first set of microwave sources is directly connected to a first sidewall and a second set of microwave sources is directly connected to a second set of microwave sources is connected to a second opposing sidewall wherein microwave sources are arranged so that products traveling up line to downline are positioned between the first and second microwave sources.

First, *Ruozi '200* illustrates a tunnel having a circular cross-section so it would be impossible for a circular construction to have an opposing parallel sidewall. Irregardless, even if one were to construe *Ruozi '200* to have a top, bottom, left side, and a right side, the microwave sources are not positioned so that a first set of microwave sources is positioned to oppose a second set of microwave sources so as to position products between the first and second sets of microwave sources. Instead, the only microwave sources that could be considered affixed to an opposing sidewall would be the left and right microwave sources which have been marked above. However, both the left and right microwave sources illustrated in *Ruozi '200* heat the underside of products "C". The products are not positioned to pass between the left and right microwave sources of *Ruozi '200.*

Ruozi '991

As explained and for the purpose cited by the Examiner, *Ruozi '991* describes a product conditioning system including a preheating stage (A), a heating stage (B), and a cooling stage (C). *Ruozi '991* does not disclose the construction for the product conditioning tunnel or the positioning or connector of microwave sources.

EVEN IN COMBINATION, THE PRIOR ART DOES NOT DESCRIBE ONE OF APPLICANT'S CLAIMED FEATURES.

It is a fundamental axiom of patent law that for a claim to be rejected under 35 U.S.C. §102 or 103, that the prior art must disclose everyone of the claimed features. Here, the cited prior art, even in combination, does not describe a first set of microwave sources directly connected to a first sidewall and a second set of microwave sources directly connected to a second opposing sidewall wherein the first and second sets of microwave sources are arranged so that products traveling up line to downline through the tunnel are positioned between the first and second sets of microwave sources.

As admitted by the Examiner, *Akutsu* does not appear to disclose the connection of the microwave sources with the conditioning tunnel. *Lipoma* illustrates a construction including only a single microwave source. Meanwhile, as illustrated in the above figures, *Ruozi '200* describes a product conditioning tunnel wherein the only microwave sources that could be considered as positioned within opposing sidewalls, and even then only if interpreted generously, then the opposing side walls position the microwave sources are positioned only on one side (the bottom side) of the products, without positioning the products between opposing first and second sets of microwave sources as claimed by Applicant.

Because this limitation is found within Claim 4, this claim and its dependent Claims 5 and 6 are believed allowable.

THERE IS NO RATIONAL FOR COMBINING THE CITED REFERENCES

With respect to obviousness, it is well known that to establish a prima facie case of obviousness, there must be some rational to modify the references in the manner claimed by the Applicant. Though the teaching/suggestion/motivation test is no longer the sole analysis for determining obviousness, "rejections on obviousness cannot be sustained with mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." If this prima facie case is not established, the Applicant is under no obligation to submit evidence or argument of non-obviousness. *KSR International Co. v. Teleflex, Inc.,* 882 U.S.P.Q. 2d. 1385,1396 (2007).

In the present case, Applicant contends that there is no rationale for combining *Akutsu, Lipoma*, and *Ruozi '200* in the manner claimed by Applicant.

Akutsu does not disclose the cross-section of the product conditioning tunnel, nor does it disclose the connection of the microwave sources with the conditioning tunnel.

Lipoma discloses a product conditioning tunnel including a pressurized tank 16. *Lipoma* states that the pressurized tank may be rectangular or circular or elliptical or any other desired shape. As it is better explained in the Declaration of Jeffrey Mackay submitted herewith, this description of any desired shape provides no suggestion as to the preferred shape. But to the contrary, as evidenced by the circular cross-section adopted throughout the prior art (See *Ruozi '200*), those skilled in the art understand that pressure vessels are ideally made with a circular cross-section. Notably, *Lipoma* further illustrates that it does not provide any teaching or rationale as to a preferred structure wherein *Lipoma* states "here again, the invention does not rely on any particular microwave oven. There are ovens presently available which are quite operable in the invention." (Col.5, lns. 41-45). Moreover, though *Lipoma* explicitly states that it suggests no preferred microwave oven, the structure disclosed in *Lipoma* includes only a single microwave source connected to a single sidewall.

Ruozi '200 is the only reference which suggests a preferred cross-section for the product conditioning tunnel. Further, *Ruozi '200* is the only reference which suggests a preferred connection of microwave sources with the product conditioning tunnel structure. In addition to the drawings, no less than eleven times in the *Ruozi '200* specification does *Ruozi* refer to the tunnel being cylindrical. In fact, *Ruozi '200* specifies in the claims that "said oven arranged as a horizontally disposed cylindrical structure split horizontally by a horizontal shelf into distinct upper level and lower level chambers". (Claim 1, Col. 8, lns. 11-14). *Ruozi '200* further provides a very specific teaching as to the placement of the microwave sources and their connection to the cylindrical structure. As illustrated in Fig. 4, (presented above) those microwave sources which can be considered opposite one another, specifically those furthest left and furthest right, both provide heating below the packages "C" and do not position products between opposing microwave sources as claimed by Applicant. Notably, again *Ruozi '200* found this arrangement so important that the structure was the subject matter of Claim 10 of the *Ruozi '200* patent.

Thus, the only teaching within *Akutsu*, *Lipoma* and *Ruozi '200* for tunnel configuration and for microwave placement is in accordance with *Ruozi '200* which requires a cylindrical tunnel connected to microwave sources which are not positioned in the manner claimed by Applicant. Thus, there is no rationale within the cited prior art to provide Applicant's claimed invention of a quadrilateral tunnel with microwave sources directly connected to opposing sidewalls so as to position products traveling up line to downline between the opposed microwave sources as claimed by Applicant. Because there is no rationale within the prior art for Applicant's claimed construction, Claim 4 and its dependent Claims 5 and 6 are allowable.

CONCLUSION

Claims 4-6 and 15-20 are believed to be in condition for allowance and notice thereof is respectfully requested. If there are any remaining issues that need to be resolved, it is requested that a telephone call be placed to the undersigned.

Respectfully submitted,

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